Supreme Court, U.S.
FILED
MAY 24 1971
E. ROBERT SEAVER, CLERK

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1214~~ 70-202

THE KROGER CO.,

Petitioner,

—v.—

FEDERAL TRADE COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SEPARATE APPENDIX

Federal Trade Commission Order, Opinions, Initial Decision and Complaint

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May 1971

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Final Order

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Chairman
Philip Elman
Everette MacIntyre
Mary Gardiner Jones
James M. Nicholson

DOCKET No. 8663

In the Matter of

BEATRICE FOODS CO., a corporation, and
THE KROGER CO., INC., a corporation.

This matter having been heard by the Commission upon the appeal of complaint counsel from the hearing examiner's initial decision and upon briefs in support of and in opposition to said appeal; and

The Commission having determined for the reasons stated in the accompanying opinion that the appeal of counsel supporting the complaint should be granted in part and denied in part,

IT IS ORDERED that respondent The Kroger Co., Inc., a corporation, and its officers, representatives, agents and employees in connection with the offering to purchase or purchase in commerce, as "commerce" is defined in the

amended Clayton Act, of fluid milk and other dairy products, for resale in outlets operated by respondent, do forthwith cease and desist from:

Knowingly inducing, or knowingly receiving or accepting, any discrimination in the price of such products by directly or indirectly inducing, receiving or accepting from any seller a net price respondent knows or should know is below the net price at which said products of like grade and quality are being sold by such seller to other customers where respondent is competing with the purchaser paying the higher price or with a customer of the purchaser paying the higher price.

IT IS FURTHER ORDERED that the complaint herein against respondent Beatrice Foods Co., be, and it hereby is, dismissed for the reasons stated in the accompanying opinion.

By the Commission. Commissioners Dixon, Elman and MacIntyre dissented in part and concurred in part; and Commissioner Nicholson dissented from the order against respondent Kroger and concurred in the dismissal of the complaint as to respondent Beatrice.

/s/ JOSEPH W. SHEA
Joseph W. Shea
Secretary

SEAL

ISSUED: December 1, 1969

Attached are: (1) Opinion of the Commission by Commissioner Jones

Final Order

(2) Separate opinions by Commissioners Dixon and MacIntyre dissenting in part and concurring in part

(3) Dissenting opinion by Commissioner Elman setting forth his reasons why the complaint should be dismissed against both respondents Beatrice and Kroger